

# Draft ACE Meeting Notes – March 14, 2019

## Attendees:

FHWA	Shane Belcher Michelle Herrell
NOAA	Cindy Cooksey (on phone)
USEPA	Kelly Laycock (on phone)
USFWS	Mark Caldwell (on phone)
SCDHEC	Chuck Hightower Cameron Polomski
SCDHEC-OCRM	Josh Hoke (on phone) Chris Stout (on phone) Blair Williams (on phone)
SCDNR	Susan Davis (on phone) Greg Mixon (on phone) Lorianne Riggins (on phone)
SCDOT	Sean Connolly Siobhan Gordon David Kelly Jessica Kennedy Lyle Lee Chad Long Vince McCarron Will McGoldrick Joy Riley
SCPRT	Amy Blinson
SHPO	Elizabeth Johnson Joe Wilkinson
Stantec	Rick Day (on phone)
Three Oaks Engineering	Russell Chandler Heather Robbins

## Purpose of the Meeting:

Agency coordination kick-off meeting for One Federal Decision for I-526 Lowcountry Corridor WEST.

FHWA gave a summary overview of One Federal Decision (OFD) in E.O. 103807

- Executive Order 13807 – Establishing Discipline and Accountability in the Environmental Review and Permitting Process. Signed and became effective August 15, 2017.
  - This Executive Order (EO) requires major infrastructure projects to be processed as One Federal Decision; this project is considered a major infrastructure project and will follow One Federal Decision.

- Sets a goal of two years between issuance of Notice of Intent (NOI) to Record of Decision (ROD), and any additional permits/authorizations 90 days after ROD
- This does not replace any current laws or regulations
- Key aspects of OFD per EO 13807:
  - Development of a single permitting timetable for the necessary environmental review and authorization decisions of agencies who have a NEPA or permit decision.
  - Preparation of a single EIS that can be used by other federal agencies to make their NEPA/permit decisions.
  - Issuance of all necessary permit and authorizations within 90 days after the ROD
  - Performance Accountability reporting to the Office of Management and Budget (OMB). FHWA is awaiting guidance from FHWA HQ whether hours worked need to be tracked on this project, and how to do that.
- Memorandum of Understanding for Implementing OFD – signed by USDOT and 11 federal agencies in April 9, 2018. Outlines how signatory agencies will jointly and cooperatively process environmental reviews and make authorization decisions.
  - MOU stresses the development of the permitting timetable in coordination with agencies to meet project milestones.
  - Preliminary project planning to be done prior to the issuance of the NOI.
  - There are scoping and concurrence points.
  - It includes an elevation and dispute resolution process to address issues and avoid delays. However, this is elevation to Headquarters of each agency. FHWA would prefer to have a dispute resolution process internally to this project to avoid elevation to headquarters offices.
  - Three main concurrence points for lead/cooperating agencies:
    - Purpose and Need (prior to issuance of NOI)
    - Alternatives to be carried forward for evaluation (prior to detailed analysis for Draft EIS)
    - Preferred Alternative (prior to FEIS)
  - FHWA will request written concurrence. Per the MOU, cooperating agency will have 10 business days to concur or not concur. If more time is needed, we can discuss this with the cooperating agencies
- One Federal Decision – activities that will occur before the NOI:
  - Identify Cooperating and Participating agencies and invite them to participate;
  - Develop a draft P & N;
  - Develop a draft Agency Coordination Plan and Permitting Timetable;
  - Identify community and stakeholders affected and develop a Public Involvement Plan (PIP);
  - Identify preliminary Range of Alternatives;
  - Determine the extent of analysis needed for each resource;
  - Initiate applicable resource surveys/studies;
  - Identify potentially significant environmental issues;

- Identify potential mitigation strategies; and,
- Initiate permit activities as soon as possible, such as pre-application process
- Working Agreement signed between USACE, USCG, USEPA, USFWS, NOAA, and FHWA:
  - Intended to accelerate and coordinate the planning, environmental review, permitting and decision-making for FHWA projects that fall under OFD
  - Included attached chart agreed upon by the agencies list above for the general coordination process for projects (See attached chart).
  - Provides for:
    - Agencies identifying a main point of contact for the project early in the process;
    - Participate in early coordination meetings;
    - Identify information required and/or applications needed for agency determinations as early as practicable;
    - Comment and/or concur on NEPA documents in a timely manner; and,
    - Dispute resolution.
    - FHWA HQ guidance is we should seek to get concurrence on the purpose and need, and range of alternatives/alternatives to be carried forward prior to the Notice of Intent.
    - FHWA HQ also strongly suggests concurrence by the agencies on the permitting timetable prior to issuing the NOI.
- Will be providing information to agencies earlier than when DEIS is issued. Goal is to provide sections of DEIS for review prior to the DEIS so that any comments/issues can be addressed sooner.
- First OFD project in the state, third in the nation done by FHWA. However, we are further along in the process than the other states, so have an opportunity to set an example for future projects and show other states/agencies how well we work together.
- If there is a delay for some reason, we will document it thoroughly, as we will be tracked on the federal permitting dashboard. Important to have local dispute resolution process to avoid delays. We will update the permitting timetable accordingly.
- USCG public notice on navigation will be issued before or during the DEIS comment period.
- USACE joint public notice will be issued when FHWA publishes DEIS so the comment period for the public notice and DEIS are at the same time.
- FHWA wants to work cooperatively to ensure that all agencies information needs for approvals and authorizations can be met within the timeframe in the OFD.

### **Three Oaks Engineering and Joy Riley of SCDOT provided a Project Summary:**

The 526 Lowcountry Corridor WEST is between Paul Cantrell Boulevard and Virginia Avenue, approximately 11.4 miles long (refer to Figure 1). The project is a four-lane divided highway. SCDOT currently ranks the segments of I-526 between I-26 and Virginia Avenue as one of the most congested segments of interstate highway in the State. The remainder of the I-526 Lowcountry Corridor WEST project, from I-26 to Paul Cantrell Boulevard, ranks among the top ten of the State's existing most

congested corridors. Forecasts show that segments of that corridor will continue to be among the State's most congested in 2040. The interchange of I-526 and I-26 is the major source of the congestion. This is due to the high number of vehicles moving between I-26 and I-526, coupled with closely spaced interchanges with ramps that have steep grades and tight curves, and limited distances for vehicles to merge onto and off of I-526.

The I-526 and I-26 System-to-System interchange is a key interchange locally. It links downtown Charleston, Summerville, West Ashley, and Mount Pleasant. I-26 links the Charleston area with the other major cities to the west like Columbia, Spartanburg, and Asheville, North Carolina, as well as with I-95, I-77, I-20, I-85, I-40, and I-81. I-526 provides the only freeway access to two important port terminals - the North Charleston terminal and the Wando Welch terminal. Wando Welch is the busiest terminal in the region and has no access to rail. Not only is I-526 an important route for daily commuting traffic, it is also part of a network for transporting freight and commercial goods to and from the Port of Charleston and throughout the region. To the west of I-26, the route crosses the Ashley River and provides a similar connection to the growing West Ashley area.

The purpose of this project is to increase capacity and improve operations at the I-26/I-526 interchange and along the I-526 mainline from Virginia Avenue to Paul Cantrell Boulevard.

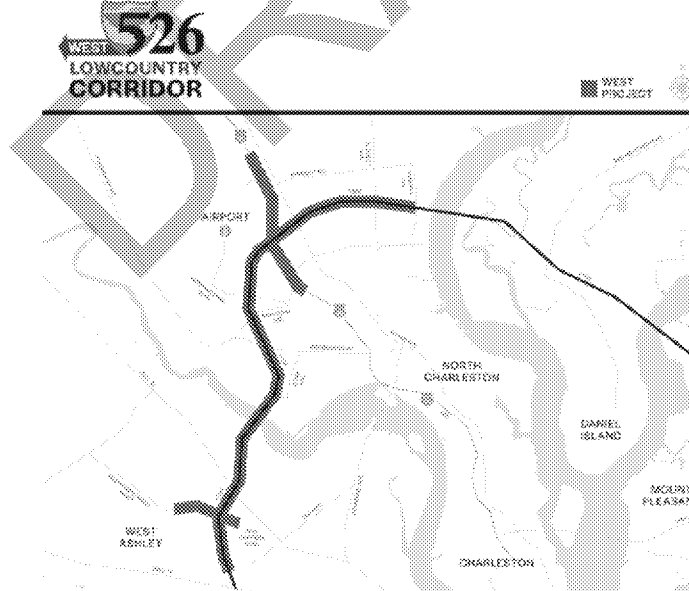


Figure 1

**Three Oaks Engineering went through the studies that had been completed and their status:**

- Cultural resources survey has been completed and will be submitted to SHPO in March 2019.
- Wetland delineations were almost completed as well as critical area delineations.

- Natural resources studies were still ongoing.
- Traffic studies being updated to 2050 and preliminary alternatives are being updated to reflect the results of the 2050 traffic modeling.
- Hydrologic surveys have been completed and initial drainage designs are underway.

#### **Agency Input:**

##### **FHWA**

- FHWA asked the agencies to review the draft agency coordination plan and the overall NEPA schedule in the back on the plan and provide comments on what deliverables they would need in order for the major milestones to be met in that overall schedule.
- Concurrence points are only required for coordinating agencies based on OFD and Section 6002 since they have NEPA decision associated with permitting decisions. Thus, USACE and USCG would be cooperating agencies for the project as they both have permit decisions. However, FHWA would like participating agencies to also concur on major milestones to ensure agencies are on board with the project as it goes through the NEPA process.
- FHWA and SCDOT asked if SCDHEC and SCDHEC-OCRM would like to be a cooperating agency also since they had an approval. SCDHEC and SCDHEC-OCRM stated they would like to discuss that internally and also asked how the schedule would flow for permitting with the USACE. FHWA asked if it would be beneficial if there was a meeting between USACE, SCDHEC, SCDHEC-OCRM, FHWA, and SCDOT.
- FHWA would like to develop a dispute resolution process in case an issue should arise so that issues can be handled at the state level rather than rely on the dispute resolution process that is in the OFD guidance, which refers it to the headquarters office of each agency. The I-73 dispute resolution process worked well and would like to see something similar for this. Action Item: Three Oaks Engineering to develop a draft process agreement/dispute resolution process based on I-73 agreement.
- Action Item: FHWA will send letter requesting agencies participation as cooperating or participating agencies by end of March. FHWA will send it to the lead office and copy those in the meeting who will be working directly on the project.
- This project will have extensive environmental justice outreach because community impacts are one of the reasons this project was elevated to EIS. FHWA will coordinate with their internal expert in environmental justice and also reach out to USEPA's expert on environmental justice. FHWA offered to share draft public involvement plan with any other agency who wanted to review it.

##### **USFWS**

- Appears that congestion is not caused by 526 interchange, but farther west near Ashley Phosphate, and thought adding more capacity would add more cars. SCDOT explained that this project is intended to focus on the I-526 corridor as well as the congestion at the I-526/26 interchange. Other projects may be done in the future on I-26 based on regional congestion management plan study currently underway.

- Would like to see a permittee responsible mitigation plan (PRM) for salt water impacts instead of a bank for mitigation.
- Improving Filbin Creek could be part of mitigation plan
- No T&E specific concerns within corridor but just outside there are known manatee occurrences (on I-526 E corridor)
- Stated there was no federally-designated critical habitat in the project area

#### **NOAA-NMFS**

- NMFS would also not support use of Murrayhill and Clydesdale banks for this project
- Full EFH assessment will be needed, including assessment of Filbin Creek

#### **SCDHEC**

- SCDHEC has one year to make a decision on the Section 401 water quality certification and is concerned about the timeline if a full permit application is not available at the time of the joint public notice issued by USACE.
- Evaluate and discuss internally if SCDHEC wants to be a cooperating or participating agency
- SCDHEC would do the work needed on the Section 401 water quality certification and pass it to SCDHEC-OCRM who would take the lead on the 401 and the Coastal Zone Certification since they to issue the critical area permit.

#### **SCDHEC-OCRM**

- The permit application would require a certified critical area line. Three Oaks Engineering stated that it would have that done in July. Stated that SCDHEC-OCRM certifies the critical area line first, then the USACE will follow with their jurisdictional determination.
- SCDHEC-OCRM has up to 6 months to make a decision on the coastal zone certification (CZC).
- Critical Area Permit is good for five years
- Remind SCDOT and Three Oaks Engineering that Critical Area surveys need to be coordinated with OCRM.

#### **SCDNR**

- Suggested a tract of Cainhoy Plantation on Daniel Island as a possible PRM site, as it has freshwater, brackish water, T&E species and species of concern.
- Will a letter be sent out requesting comments? SCDOT stated they would send out letters at formal concurrence points and request concurrence in writing.
- Main concern is tidal river crossings.
- Encouraged SCDOT to reach out to SCDNR protected species group.

#### **SCDOT**

- Will provide all agencies the same documents regardless of status as cooperating or participating agency
- Would like state agency input.
- Consider this a formal request for comments on documents already sent, including the draft purpose and need statement and the draft agency coordination plan.
- Please send Will McGoldrick comments on these documents by 3/29.

#### **SCPRT**

- SCPRT provided a map of the Section 6(f) property for boundary lines
- Stated they need to see what is being taken as soon as possible to start process
- Anticipate a full 6(f) conversion on Russelldale.
- Stated that SCDOT and FHWA need to reach out to North Charleston since they manage the property.
- Stated that identifying replacement property in the same community is a concern.
- SCDOT stated they would set up a separate meeting with SCPRT and FHWA on Section 6(f) conversion process.

#### SHPO

- Hadn't received the cultural resources report yet but would review it and talk to SCDOT after the review
- Stated they would do a two-step process, first they would do concurrence on eligibility determinations and then do concurrence on effect determinations.

#### Three Oaks Engineering

- Proposed Cooperating and Participating Agencies.
- NEPA permitting schedule and Permitting timetable are two separate documents. ACE meetings as well as additional monthly meetings. Milestone meetings correlate with concurrence points. Discuss Agency Coordination Plan, permitting timetable and P&N in April. First concurrence points are in May 2019. Agencies letters to go out in March. 10 days for concurrence but can extend as needed. Refer to draft schedule.
- Propose monthly meeting: 3<sup>rd</sup> Thursday of each month at 9:00 am. Move April meeting to 4/23 due to Spring Break.
- Action items: Agencies review plan and permitting timetable, P&N comments to Will 3/29. Incorporate comments from 4/23 meeting. Permitting meeting to be scheduled. Doodle poll. Draft dispute and process agreement.

#### Action Items:

Action Items	Date	Status
SCDOT to set up meeting between USACE, SCDHEC, SCDHEC-OCRM, FHWA and SCDOT	March 14, 2019	Action completed. Meeting set for April 1, 2019
Three Oaks Engineering to develop a draft process agreement/dispute resolution process based on I-73 agreement.	March 14, 2019	
FHWA will send letter requesting agencies participation as cooperating or participating agencies by end of March 2019.	March 14, 2019	Letters were sent out via FedEx on March 29, 2019
Agencies to review the draft purpose and need statement and draft agency coordination plan and provide Will McGoldrick comments by 3/29/2019	March 14, 2019	
SCDOT to set up meeting with FHWA and SCPRT regarding Section 6(f) conversion process	March 14, 2019	

#### Cooperating Agencies:

Agency	Primary Responsibility
U.S. Coast Guard (USCG)	Navigational Permitting for Bridges
U.S. Army Corps of Engineers (USACE)	Jurisdictional Area Determination and Section 404/10 Permitting; Wetlands and streams expertise

#### Participating Agencies:

Federal Agencies	
Agency	Primary Responsibility
U.S. Fish and Wildlife Service (USFWS)	Consultation on Endangered Species Act, Migratory Bird Treaty Act, Bald & Golden Eagle Protection Act, Fish & Wildlife Coordination Act Streams and wetlands expertise
U.S. Environmental Protection Agency (USEPA)	NEPA/Environmental Justice Review Section 404, Section 401, Water Quality
NOAA National Marine Fisheries Service (NMFS)	Essential Fish Habitat Endangered Species Act/Marine Mammal Protection Act Coordination

State Agencies	
Agency	Primary Responsibility
South Carolina Department of Archives and History (SCDAH)	Archaeological and Historical Resources consultation, Section 106 review
South Carolina Department of Health & Environmental Control; Ocean and Coastal Resource Management (SCDHEC-OCRM)	Jurisdiction of Critical Areas, Critical Area Permitting, Air, and Section 401 Water Quality & CZM consistency determinations; wetlands and streams expertise
South Carolina Department of Natural Resources (SCDNR)	State Protected Species; wetlands and streams expertise
South Carolina Department of Parks, Recreation & Tourism (SCPRT)	Consultation on Section 6(f) properties funded by Land and Water Conservation Fund Act

Sovereign Nations	
	Primary Responsibility
Catawba Indian Nation	Historic/cultural resources review
Eastern Shawnee Tribe	Historic/cultural resources review
Muscogee (Creek) Nation	Historic/cultural resources review



# **Draft Schedule:**

<b>Milestones</b>	<b>Date</b>
<b>2019</b>	
<i>Agency Project Kickoff and Scoping Meeting</i>	<i>March 14, 2019</i>
Send Letters Inviting Cooperating and Participating Agencies	March 2019
Agencies review draft Purpose and Need Statement	April 2019
Agencies review Agency Coordination Plan and Permitting Timetable	March-April 2019
<i>Follow-up Agency Meeting to discuss ACP, Permitting Timetable, and P&amp;N Statement</i>	<i>April 2019</i>
<b>Concurrence Point for Agency Coordination Plan and Permitting Timetable</b>	<b>May 2019</b>
<b>Concurrence Point for Purpose and Need Statement</b>	<b>May 2019</b>
Project Initiation Letter and Navigation Report sent to USCG	May 2019
<i>Agency Meeting to discuss the alternative evaluation criteria, alternatives analysis process, and Preliminary Range of Alternatives</i>	<i>Summer 2019</i>
Agencies Review the Preliminary Range of Alternatives for Concurrence	Summer 2019
Submit Preliminary Jurisdictional Determination to USACE & Critical Area to SCDHEC-OCRM	July 2019
FHWA issues Notice of Intent (NOI)	July 2019
Community and Stakeholder Meetings	August-September 2019
Public Information Meeting	Fall 2019
<i>Agency Meeting to discuss initial Alternatives Analysis and Reasonable Range of Alternatives</i>	<i>Fall 2019</i>
<b>Concurrence Point for Preliminary Range of Alternatives/Alternatives Carried Forward by Agencies</b>	<b>Fall 2019</b>
Continued Coordination with Agencies on specific resources (i.e. Permitting, EFH, Section 106, Section 7, etc.)	Fall/Winter 2019
<i>Agency Meeting to discuss potential mitigation options</i>	<i>Winter 2019</i>
<b>2020</b>	
<i>Agency Meeting to discuss Reasonable Alternatives and Preferred Alternative</i>	<i>Late Spring 2020</i>
Preliminary Draft EIS section for review by Agencies	Spring/Summer 2020
<b>Agency Meeting and Concurrence Point for Preferred Alternative by Agencies</b>	<b>Summer 2020</b>
Pre-Application Meeting with UASCE and SCDHEC	Summer 2020
Draft EIS issued; Joint USACE Individual Permit and USCG Public Notices	Fall 2020
Community and Stakeholder Meetings	Fall 2020
Public Hearing	Fall/Winter 2020
<i>Agency Meeting to discuss comments received during the public hearing comment periods and path forward to FEIS/ROD</i>	<i>Winter 2020-2021</i>
Response to Public and Agency Comments	Winter 2020-2021
<b>2021</b>	
Prepare Final EIS/Record of Decision	Spring 2021
FHWA Issues FEIS/ROD	Summer 2021
USACE and USCG Issue Permit Decisions	Summer/Fall 2021